

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jackie Manginelli	Team: Squad #10	CCRB Case #: 201908507	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 09/24/2019 11:00 AM	Location of Incident: § 87(2)(b)	Precinct: 34	18 Mo. SOL 3/24/2021	EO SOL 11/8/2021	
Date/Time CV Reported Wed, 09/25/2019 4:11 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 09/25/2019 4:11 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Emmett Butler	04198	953712	034 PCT
2. LT James Moore	00000	932939	034 PCT
3. POM Terence Walsh	02324	954415	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jose Jimenez	00879	923989	034 PCT
2. POM Roberto Garcia	31188	920318	034 PCT
3. POM Wilfredo Rodriguez	26683	965477	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Emmett Butler	Abuse: Police Officer Emmett Butler entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
B.POM Terence Walsh	Abuse: Police Officer Terence Walsh entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
C.LT James Moore	Abuse: Lieutenant James Moore forcibly removed § 87(2)(b) to the hospital	§ 87(2)(b)
D.LT James Moore	Abuse: Lieutenant James Moore entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
E.LT James Moore	Abuse: Lieutenant James Moore searched § 87(2)(b) s recording device.	§ 87(2)(b)
F.POM Terence Walsh	Force: Police Officer Terence Walsh used physical force against § 87(2)(b)	§ 87(2)(b)
G.LT James Moore	Force: Lieutenant James Moore used physical force against § 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

### Case Summary

On September 25, 2019, § 87(2)(b) filed the following complaint with the CCRB over the phone.

On September 24, 2019, at approximately 11:00 a.m., § 87(2)(b) was inside of her apartment at § 87(2)(b) in Manhattan working when she heard her doorbell. § 87(2)(b) opened her door and saw, PO Emmett Butler and PO Terence Walsh, both of the 34<sup>th</sup> Precinct.

PO Butler and PO Walsh told § 87(2)(b) that someone called 911 and reported that § 87(2)(b) said she was going to kill herself and EMS needed to evaluate her. § 87(2)(b) tried to close her door, but PO Walsh held § 87(2)(b)'s door open (**Allegation A – Abuse of Authority: Entry of Premises: § 87(2)(g)**).

§ 87(2)(b) then went into her apartment and PO Butler fully opened § 87(2)(b)'s door and entered her apartment (**Allegation B – Abuse of Authority: Entry of Premises: § 87(2)(g)**).

Two additional officers, PO Jose Jimenez and PO Roberto Garcia, also of the 34<sup>th</sup> Precinct, then arrived at § 87(2)(b)'s apartment, but left the scene shortly after arriving.

§ 87(2)(b) returned to her door and PO Butler and PO Walsh exited § 87(2)(b)'s apartment and stood in the hallway with PO Butler standing in the doorway (also **Allegation B**). Lieutenant James Moore then arrived with his driver, PO Wilfredo Rodriguez. Lieutenant Moore instructed PO Rodriguez to wait outside of the apartment building.

EMT § 87(2)(b) and EMT § 87(2)(b) then arrived at § 87(2)(b)'s apartment and evaluated § 87(2)(b). § 87(2)(b) refused to show the EMTs her text message exchange and Lieutenant Moore told her that she was going to the hospital (**Allegation C – Abuse of Authority: Forcible Removal to Hospital: § 87(2)(g)**). § 87(2)(b) told the officers and EMTs to wait in the hallway while she went inside her apartment. Lieutenant Moore then entered § 87(2)(b)'s apartment (**Allegation D – Abuse of Authority: Entry of Premises: § 87(2)(g)**). Lieutenant Moore walked down the hallway toward § 87(2)(b)'s bedroom and encountered § 87(2)(b) standing at the door to § 87(2)(b)'s bedroom.

§ 87(2)(b) stepped back into § 87(2)(b)'s bedroom and Lieutenant Moore, PO Walsh, and PO Butler entered § 87(2)(b)'s bedroom (within **Allegation D**). Lieutenant Moore grabbed § 87(2)(b)'s phone and looked through her text messages (**Allegation E – Abuse of Authority: Search of recording device: § 87(2)(g)**). Lieutenant Moore and PO Walsh allegedly dragged § 87(2)(b) out of her apartment and strapped her to an EMS Chair (**Allegation F – Force: Physical Force: § 87(2)(g)**, **Allegation G – Force: Physical Force: § 87(2)(g)**). § 87(2)(b) was then removed to § 87(2)(b). § 87(4-b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Body-worn camera footage was obtained from PO Butler, PO Walsh, Lieutenant Moore, PO Jimenez, PO Garcia, and PO Rodriguez (**Board Review 5 - 10**). Footage from exterior and interior cameras from § 87(2)(b) were also obtained (**Board Review 11**). The building footage captures officers and EMS entering the building, and § 87(2)(b) being escorted out of the building in an EMS chair, however, it does not capture any additional allegations. The relevant

video footage will be discussed in detail below.

### **Findings and Recommendations**

**Allegation A – Abuse of Authority: Police Officer Emmett Butler entered § 87(2)(b) in Manhattan.**

**Allegation B – Abuse of Authority: Police Officer Terence Walsh entered § 87(2)(b) in Manhattan.**

§ 87(2)(b) was interviewed at the CCRB on September 30, 2019 (**Board Review 03**). A statement could not be obtained from § 87(2)(b) because he was unavailable. Lieutenant Moore was interviewed on December 19, 2019 (**Board Review 04**). § 87(2)(g)

In her sworn statement, § 87(2)(b) stated that PO Walsh, PO Butler, and Lieutenant Moore arrived at her apartment and rang the doorbell. § 87(2)(b) opened the door and PO Walsh, PO Butler, and Lieutenant Moore told her that they received a report that she wanted to kill herself. § 87(2)(b) told the officers that this was a misunderstanding and that she did not want to kill herself. § 87(2)(b) tried to close her door, but PO Butler stuck his foot in the door, preventing her from closing it.

The investigation determined that Lieutenant Moore was not present when PO Walsh and PO Butler first entered § 87(2)(b)'s apartment.

The Detailed Event Number § 87(2)(b) stated that a female caller received a text message from a friend threatening to hang herself, that she had tried to hang herself, but, that her doorknob broke in the attempt to hang herself, and that she may try to hang herself again (**Board Review 18**).

The radio communications stated that there was an Emotionally Disturbed Person (EDP) inside of § 87(2)(b). At 18:00 minutes into the recording, the 911 dispatcher told the officers that a call came over from NYC Well to 911, from a caller who received a text message from the EDP inside of § 87(2)(b). The text messages stated that the EDP had threatened to hang herself (**Board Review 23**).

PO Walsh's body-worn camera footage captured the incident in its entirety (**Board Review 05**). PO Walsh and PO Butler arrived at § 87(2)(b)'s apartment and knocked on her door. PO Walsh and PO Butler identified themselves as officers and explained that they were there because someone reported that § 87(2)(b) was going to hurt herself. § 87(2)(b) attempted to close the door. At 02:04 minutes into the recording, PO Walsh pushed open § 87(2)(b)'s door and told § 87(2)(b) that she needed to leave the door open.

PO Butler's body-worn camera footage captured the incident in its entirety (**Board Review 06**). The content of PO Butler's body-worn camera was generally consistent with that of PO Walsh. While PO Walsh and PO Butler stood in § 87(2)(b)'s hallway, § 87(2)(b) went into her apartment for approximately one minute. At 03:51 minutes into the recording, PO Butler pushed § 87(2)(b)'s door open and walked a few feet into § 87(2)(b)'s apartment.

It was undisputed that PO Butler and PO Walsh received a radio report that § 87(2)(b) told a 911 caller on the date of the incident that she would hang herself. It was also undisputed that PO Butler and PO Walsh entered § 87(2)(b)'s apartment.

Police officers may enter a civilian's property if they have reasonable grounds to believe that there was an emergency at hand and an immediate need for their assistance for the protection of life or property. Also, there must be a reasonable basis to associate that emergency with the area or place to be searched. People v. Rodriguez, 77 A.D.3d 280, 907 N.Y.S.2d 294 (App. Div. 2010) (**Board Review 12**).

§ 87(2)(g)

**Allegation C – Abuse of Authority: Lieutenant James Moore forcibly removed § 87(2)(b) to the hospital.**

**Allegation D – Abuse of Authority: Lieutenant James Moore entered § 87(2)(b) in Manhattan.**

In her sworn statement, § 87(2)(b) stated that EMT § 87(2)(b) and EMT § 87(2)(b) arrived at her apartment and asked her a series of questions. EMT § 87(2)(b) and EMT § 87(2)(b) asked § 87(2)(b) whether she knew if it was day or night. She replied that it was day. They asked § 87(2)(b) what day it was. She replied that it was the twenty-fourth of September. They asked § 87(2)(b) who the president was. § 87(2)(b) replied that the president was Donald Trump. Lieutenant Moore then said, “that’s it” and EMT § 87(2)(b) and EMT § 87(2)(b) told § 87(2)(b) that she needed to go with them to get help. § 87(2)(b) told the EMTs she would like them to leave. Lieutenant Moore responded that § 87(2)(b) needed to go with them. After she had answered the EMTs questions, she told the officers and the EMTs to wait in the hallway so that she could get her belongings. § 87(2)(b) told them that she needed to go get her computer. Lieutenant Moore, and other officers, walked into § 87(2)(b)'s apartment and bedroom.

In his interview, Lieutenant Moore said he decided § 87(2)(b) was emotionally disturbed and needed to go to the hospital prior to EMTs arriving, because she stated she was depressed and had tried to kill herself in the past, and the 911 caller stated that § 87(2)(b) wanted to commit suicide. Lieutenant Moore spoke with § 87(2)(b) for approximately twenty minutes before EMS arrived at the location. When EMS arrived, the EMTs asked § 87(2)(b) a series of questions to evaluate her psychiatric health. While the EMTs called their supervisor to confer about next steps, Lieutenant Moore decided that § 87(2)(b) needed to go to the hospital, and the EMTs informed § 87(2)(b) § 87(2)(b) told the officers that she would get her shoes and went inside of her apartment. The officers waited a few seconds for § 87(2)(b) to get her shoes, but she did not return to the door. Lieutenant Moore then entered § 87(2)(b)'s apartment and bedroom because he did not know where she was, he was afraid she might hurt herself, and she needed to go to the hospital.

Lieutenant Moore's body-worn camera footage captures this portion of the incident in its entirety (**Board Review 07**). Prior to EMTs arriving at her apartment, at 2:18 minutes into the recording, § 87(2)(b) told the officers that she needed brain surgery, confirmed the name of the person who reported her threatening to kill herself, and said that she thought about killing herself in the past and that she would probably kill herself in the future, but not that day. Between 26:50 minutes and 28:58 minutes, the EMTs ask § 87(2)(b) if she knows what year they are in, if it is currently day or night, who the president is, if she has any medical problems, and if she takes any medication. § 87(2)(b) answers that she knows who called 911 and that the caller took all of her family photographs, that she does not have any medical problems, that the year is 2019, that it is daytime,

and that the president is Donald Trump, and that she does not take any medication. The EMTs ask if she is feeling depressed. § 87(2)(b) said that she felt depressed in the past but did not feel depressed that day. The EMTs ask § 87(2)(b) if she felt like harming herself or others. § 87(2)(b) replies that she did not feel like harming herself or others. The EMTs ask § 87(2)(b) if she is suffering from dementia. She replies that she is not suffering from dementia. The EMTs call their supervisor. At 29:41, the EMTs ask the officers if they have seen the text messages. § 87(2)(b) says that she does not want to show them her text messages. One of the EMTs tells her that it would help to clear up the situation. § 87(2)(b) says that she does not want to show her text messages because they are her personal business. At 33:16, Lieutenant Moore says that § 87(2)(b) is “going to have to go.” The EMTs then explain to § 87(2)(b) that she needed to go to the hospital.

The detailed event number § 87(2)(b) stated that a female caller received a text message from a friend threatening to hang herself, that she had tried to hang herself, but, that her doorknob broke in the attempt to hang herself, and that she may try to hang herself again (**Board Review 18**).

The radio communications stated that there was an EDP inside of § 87(2)(b). At 18:00 minutes into the recording, the 911 dispatcher told the officers that a call came over from NYC Well to 911, from a caller who received a text message from the EDP inside of § 87(2)(b). The text messages stated that the EDP had threatened to hang herself (**Board Review 23**).

The text messages between § 87(2)(b) and § 87(2)(b) from the morning of September 24, 2019, were obtained from § 87(2)(b) during the investigation (**Board Review 19-22**). In them, § 87(2)(b) states, “I have been depressed about my photographs of my mum and dad. Tried to kill myself. I still may... With my past I have no future.” She also states, “I tried to hang myself, but it did not work... The pain is so bad. I knew right away but I was so depressed I could not talk so I tried to hang myself, but I could only do it with a scarf on a doorknob and the knob fell off in the bedroom.”

§ 87(2)(b) § 87(2)(b) records (**Board Review 13**) contained a Pre-Hospital Care Assessment made by EMT § 87(2)(b) and EMT § 87(2)(b). The report stated that, “As per NYPD,” § 87(2)(b) “sent a text message to a friend stating she was going to hang herself over some family pictures that went missing.” Also, § 87(2)(b) stated that § 87(2)(b) “has been acting erratic and threatening to harm herself.” § 87(2)(b) told the EMTs that, “She has tried to commit suicide in the past by hanging but she is not feeling suicidal right now.” The records also contained a Psychiatric Evaluation. § 87(2)(b) stated that, as per EMS, § 87(2)(b) “Had been talking with this tenant,” § 87(2)(b) “about these lost photos, and stated that she had, at some point in time, attempted suicide with a scarf, and the doorknob broke; she also reported in this conversation the continued thought that she would kill herself.” § 87(2)(b) final disposition was that § 87(2)(b) be discharged to home.

It was undisputed that Lieutenant Moore made the decision to remove § 87(2)(b) to the hospital and that he entered § 87(2)(b)'s apartment and bedroom.

According to NYPD Patrol Guide Procedure 221-13, when a uniformed member of service reasonably believes that a person who is apparently mentally ill or emotionally disturbed, and, is conducting themselves in a manner that is likely to result in a serious injury to themselves or others, they must be taken into protective custody (**Board Review 17**).

According to NYPD Patrol Guide Procedure 216-01, when a civilian requires medical aid for any

reason, including mental illness, officers must cooperate with ambulance and hospital personnel in every reasonable manner (**Board Review 14**).

Police officers may enter a civilian's property if they have reasonable grounds to believe that there was an emergency at hand and an immediate need for their assistance for the protection of life or property. Also, there must be a reasonable basis to associate that emergency with the area or place to be searched. People v. Rodriguez, 77 A.D.3d 280, 907 N.Y.S.2d 294 (App. Div. 2010) (**Board Review 12**).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

**Allegation E – Abuse of Authority: Lieutenant James Moore searched § 87(2)(b)'s recording device.**

In her sworn statement, § 87(2)(b) stated that Lieutenant Moore took her phone after the police officers and EMTs entered her bedroom but did not allege that Lieutenant Moore looked through her phone.

In his interview, Lieutenant Moore stated that when he and the other officers were speaking to § 87(2)(b) in the hallway, they asked her numerous times to see the text messages between her and § 87(2)(b) but § 87(2)(b) refused to let the officers see the text messages. Lieutenant Moore, PO Walsh, and PO Butler explained to § 87(2)(b) that if she did not want to go to the hospital, then she needed to let the officers see the text messages on her phone. Lieutenant Moore acknowledged that they did not need to see the text messages to bring her to the hospital. Lieutenant Moore denied looking through § 87(2)(b)'s phone, but he did gather § 87(2)(b)'s belongings, including her phone, to bring her to the hospital.

PO Walsh's body-worn camera footage captures this incident in its entirety (**Board Review 05**). At 40:00 minutes into the recording, Lieutenant Moore asked § 87(2)(b) to see the text messages on her phone. § 87(2)(b) replied that no, they cannot see the messages on her phone because she thinks it would be an intrusion of her privacy. At 44:39 minutes into the recording, one of the EMTs asked § 87(2)(b) to show the officers the messages on her phone. Again, § 87(2)(b) replied no, because she thinks it would be an intrusion of her privacy. At 49:49 minutes into the recording, Lieutenant Moore, PO Walsh, and PO Butler entered § 87(2)(b)'s bedroom. Lieutenant Moore walked up to where § 87(2)(b) was standing in the back-left corner of the bedroom. PO Walsh and PO Butler spoke with § 87(2)(b) near the door of § 87(2)(b)'s bedroom and there was a clear view of Lieutenant Moore speaking with § 87(2)(b). § 87(2)(b) told § 87(2)(b) to not give Lieutenant Moore her phone. At 50:07 minutes, Lieutenant Moore appeared to be holding § 87(2)(b)'s phone while looking at the screen and scrolling through it.

contents with his left-hand thumb.

Lieutenant Moore's body-worn camera footage captures this incident in its entirety (**Board Review 07**). Lieutenant Moore's body-worn camera footage is generally consistent with that of PO Walsh but did not capture the point where he scrolled through the phone screen. At 36:05, Lieutenant Moore asked § 87(2)(b) to see her phone. § 87(2)(b) repeated that she was in the middle of working. Lieutenant Moore took § 87(2)(b)'s phone. Between 36:47 and 36:50, § 87(2)(b)'s phone entered view of Lieutenant Moore's body-worn camera. Green text messages can be observed on the screen of § 87(2)(b)'s phone.

The content of PO Butler's body-worn camera (**Board Review 06**) is generally consistent with that of PO Walsh and Lieutenant Moore but did not capture the point where Lieutenant Moore scrolled through the phone screen.

Body-worn camera footage captured § 87(2)(b) telling the officers they could not look at the messages in her phone because it would be an intrusion on her privacy. While Lieutenant Moore stated that he took § 87(2)(b)'s cellphone to help her get her stuff together to go to the hospital, body-worn camera footage from PO Walsh showed Lieutenant Moore looking at the screen on § 87(2)(b)'s phone while appearing to scroll with his left-hand thumb. Lieutenant Moore's body-worn camera also showed green text messages open on § 87(2)(b)'s phone while Lieutenant Moore was holding it. § 87(2)(g)

In Riley v. California, 573 U.S. 373 (Supreme Court of the United States) found that a cellphone, is in fact, a minicomputer that has immense storage capacity that may contain a vast array of private information. The court determined that police officers must generally obtain a warrant before searching the contents of a cellphone (**Board Review 15**).

§ 87(2)(g)

**Allegation F – Force: Police Officer Terence Walsh used physical force against § 87(2)(b)**

**Allegation G – Force: Lieutenant James Moore used physical force against § 87(2)(b)**

In her sworn statement, § 87(2)(b) stated that Lieutenant Moore grabbed her right forearm and pulled her out of her apartment. § 87(2)(b) told Lieutenant Moore to take his hand off her arm because he was hurting her and pulled both of her arms back towards her chest and moved her body away from Lieutenant Moore. § 87(2)(b) told Lieutenant Moore that she did not want to go to the hospital. Lieutenant Moore squeezed § 87(2)(b)'s forearm tighter and pinched her. Lieutenant Moore then swung § 87(2)(b) around so that she was turned around and sitting on the EMS chair. § 87(2)(b) was strapped into the chair and wheeled out of her apartment by EMT § 87(2)(b) and EMT § 87(2)(b).

In his interview, Lieutenant Moore explained that § 87(2)(b) did not cooperate with walking out of her apartment, so he placed his hands on her shoulders and guided her out of the apartment. § 87(2)(b) moved her feet on her own while being guided. Once outside of the apartment, Lieutenant Moore assisted in strapping § 87(2)(b) to an EMS chair.

Lieutenant Moore's body-worn camera footage captured this portion of the incident in its entirety (**Board Review 07**). Between 40:05 and 41:23, Lieutenant Moore, PO Walsh, PO Butler, EMT

§ 87(2)(b) and EMT § 87(2)(b) explain to § 87(2)(b) that she needs to leave her apartment and go to the hospital. § 87(2)(b) refuses multiple times. At 41:25, PO Walsh grabs § 87(2)(b) right arm and Lieutenant Moore grabs both of § 87(2)(b) s arms. PO Walsh and Lieutenant Moore walk § 87(2)(b) out of the apartment through her bedroom, her hallway, and out her front door while holding her arms. At 41:53, § 87(2)(b) holds onto the doorway to the left in her hallway that leads into her kitchen. Lieutenant Moore and PO Walsh continue to move § 87(2)(b) out of the apartment by pulling on her arms and forcing her to walk. Lieutenant Moore and PO Walsh forced § 87(2)(b) to sit in the EMS chair after she refused multiple times to sit on it. Lieutenant Moore and PO Walsh help the EMTs strap § 87(2)(b) into the chair.

PO Walsh's body-worn camera footage (**Board Review 05**) and PO Butler's body-worn camera footage (**Board Review 06**) captured this portion of the incident in its entirety. PO Walsh's body-worn camera footage and PO Butler's body-worn camera footage were generally consistent with that of Lieutenant Moore's body-worn camera footage.

It was undisputed that § 87(2)(b) refused to go to the hospital multiple times. It was also undisputed that Lieutenant Moore and PO Walsh grabbed § 87(2)(b) s arms and forced her to walk out of her bedroom and apartment, then sat § 87(2)(b) in an EMS chair and strapped her in.

Patrol Guide Procedure 221-02 states that when an officer must gain compliance, control, or custody of an uncooperative subject the officer should take necessary action to protect life and personal safety of all persons present, including subjects being placed into custody. In determining whether the use of force is reasonable, officers should consider actions taken by the subject, the duration of the action, the immediacy of the perceived threat or harm to the subject, and whether the subject is actively resisting custody (**Board Review 16**).

§ 87(2)(g)  
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§ 87(4-b), § 87(2)(g) \_\_\_\_\_  
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### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 01**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 24**).
- Lieutenant Moore has been a member of the NYPD for sixteen years and has been a subject



in two previous CCRB complaints and four allegations, none of which were substantiated.

§ 87(2)(g)

- Police Officer Emmett Butler has been a member of the NYPD for seven years and has been a subject in two previous CCRB complaints and two allegations. In one case, the allegation was not substantiated. The second case is currently open and is pending board review. § 87(2)(g)
- Police Officer Terence Walsh has been a member of the NYPD for seven years and this is the first complaint for which he has been a subject.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On January 10, 2020, a request for any Notice of Claim regarding this incident has been submitted to the New York City Comptroller's Office, the results of which will be added to the case file upon receipt.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (**BR 02**).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York city (**BR 25**).

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Squad No.: 10

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date